

REMARKS

Claims 1-55 were pending in the application at the time of the Restriction Requirement. The restriction set forth a requirement requiring Applicants to elect one of the following groups of claims for prosecution on the merits:

Group I: Claims 1-27, drawn to a composition of a nucleophile and a compound having a conjugated unsaturated double bond.

Group II: Claims 28-55, drawn to a method of embolizing a blood vessel.

Applicant hereby elects without traverse Group II containing claims 28-55 for examination.

The Office Action also includes an Election of Species requirement. The species to be elected for the method claims are as follows: Poly(propylene glycol) diacrylate as the component containing an unsaturated bond, Pentaerthritol-tetrakis-3-mercaptopropionate as the nucleophilic component, phosphate buffered saline as the buffer, and Sodium hydroxide as the base. Claims 29-47 and 50-55 are believed to be readable on the elected species.

The Applicant appreciates the Examiner's careful consideration of the claims and acknowledgement as to the patentable distinctions between these species and corresponding claims. As the Examiner indicates on page two of the Office Action, each species is patentably distinct and "nonobvious variants of each other based on the current record". (Emphasis added). *See also* MPEP § 802.01.

As the Examiner knows, 35 U.S.C. 121 authorizes the Director to restrict the claims in a patent application to a single invention (as noted on page 2 of the Office Action), and the third sentence of 35 U.S.C. 121 prohibits the use of a patent issuing on an application with respect to which a requirement for restriction has been made, or on an application filed as a result of such a requirement, as a reference against any divisional application. Thus, this restriction requirement nullifies any double patenting rejection (statutory or non-statutory) with respect to this application and any divisional applications filed here from. Moreover, this restriction nullifies any potential double patenting invalidity grounds regarding any issued patents that may subsequently issue based on such species designations (subject to the conditions set forth in MPEP 804.01).

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to **Deposit Account**

No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; or (2) any patent application and reexamination processing fees under 37 CFR § 1.17.

Dated this 31st day of August, 2009.

Respectfully submitted,

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